

HARRY C. AMES 1890-1966
HARRY C. AMES, JR.
WILMER B. HILL
E. STEPHEN HEISLEY

DAVID C. VENABLE
DWIGHT L. KOERBER, JR.
ELIZABETH A. PURCELL
LESTER R. GUTMAN
MICHAEL D. BROMLEY

LAW OFFICES OF
AMES, HILL & AMES, P.C.
666 ELEVENTH STREET, N.W.
WASHINGTON, D.C. 20001

TELEPHONE
202-628-9243

WILMER A. HILL
OF COUNSEL

June 11, 1979

Date JUN 11 1979

Fee \$

50.00

CC Washington

RECORDATION NO.

10494

Filed 1425

JUN 11 1979 - 3 52 PM

Mr. H. Gordon Homme, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Re: Recordation of Conditional Sales Agreement

Dear Mr. Homme:

I am transmitting herewith a Conditional Sales Agreement between FMC Corporation and McHugh Brothers Crane Rentals, Inc., pertaining to the purchase of fifty (50) units of new standard gauge boxcars. In accordance with the Commission's rules, I am enclosing a filing fee check in the amount of \$50.00. It should be noted that this Conditional Sales Agreement is signed by duly authorized personnel for each party, and is notarized.

The particular boxcars in question are identified as:

Type	Road Numbers
------	--------------

70-ton	NHIR
50'6" XF Box	851-900
Cars with single	Incl.
10' Sliding Doors	
and Rigid Underframes	

In order to avoid the necessity of paying a substantial penalty clause, we respectfully request that this Conditional Sales Agreement be recorded today.

Very truly yours,

Dwight L. Koerber, Jr.

cc: Robert McHugh
Bart R. van Eck

DLK,jr:kj

RECEIVED
FEE OPERATION BR
I.C.C.

JUN 11 3 23 PM '79

RECEIVED

10494

RECORDATION NO. 1425

CONDITIONAL SALE AGREEMENT

JUN 11 1979 - 3 30 PM

INTERSTATE COMMERCE COMMISSION

Conditional Sale Agreement ("Agreement") dated as of June 7, 1979, between FMC Corporation, a Delaware Corporation ("Builder") and McHugh Brothers Crane Rentals, Inc. ("Buyer").

WHEREAS Builder has agreed to construct, sell and deliver to Buyer and Buyer has agreed to purchase 50 units of new standard gauge boxcars as described in Annex A attached (collectively, the "Equipment"); and

WHEREAS, Buyer wishes Builder to ship and deliver the Equipment at various times prior to payment for the Equipment and Builder is willing to do so, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements, the parties agree as follows:

Article 1. Delivery. Upon acceptance by Buyer, Builder will deliver the Boxcars to Buyer or such other persons as may be designated by Buyer, at Builder's plant, Portland, Oregon, or as shall be determined by mutual agreement of the parties, in accordance with delivery schedules established by the parties; provided, however, that none of the Boxcars shall be delivered under this Agreement until it has been filed and recorded with the Interstate Commerce Commission. Delivery is subject to delays resulting from causes beyond Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or Equipment or delays of carriers or subcontractors.

Article 2. Purchase Price and Payment. The price per unit of the Equipment is \$37,150, F.O.B. Builder's plant at Portland, Oregon. The aggregate purchase price of \$1,857,500 for the 50 units is hereafter called the CSA Indebtedness.

The Buyer promises to pay the CSA Indebtedness in cash to Builder on or before July 2, 1979, plus interest on the unpaid balance from June 21, 1979 at 14% p a or such lesser amount as may be legally enforceable. Buyer shall also pay storage charges on the Equipment from June 11, 1979 until delivered.

Article 3. Title to the Equipment. Builder retains the full legal title to and property in the Equipment until Builder has received payment in full of the CSA Indebtedness (\$1,875,500) accrued interest and storage charges, as provided in Article 2, notwithstanding the delivery of the Equipment to and the possession and use of it by Buyer or the New Hope & Ivyland Railroad ("Lessee"). Any and all additions to the Equipment and any and all replacements of the Equipment and its parts and additions to it shall be accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the CSA Indebtedness, interest and all storage charges have been paid, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Buyer without further transfer or action on the part of the Builder. However, Builder, if so requested by the Buyer at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to Buyer, or upon its order, free of all liens, security interests and other encumbrances arising from, through or under Builder and those created or retained hereby and deliver such bill or bills of sale to Buyer at its address referred to in Article 14, and (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of Buyer to the Equipment. Buyer waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and delivery such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and delivery such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Buyer.

Article 4. Marking of the Equipment. Buyer will cause each unit of the Equipment to be kept numbered with the identifying numbers as set forth in Schedule A, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Interest Filed with Interstate Commerce Commission". Buyer will not change or permit to be changed the number of any unit of the Equipment. Buyer will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that Buyer may cause the Equipment to be lettered with the names or initials or other insignia of the Lessee.

Article 5. Maintenance; Compliance with Laws and Rules. Buyer will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, Buyer will at all times comply and cause Lessee to comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, Buyer and Lessee will conform therewith, at its own expense; provided, however, that Buyer may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Builder, adversely affect the property or rights of Builder under this Agreement. Buyer will at all times prior to the payment in full of

the CSA Indebtedness (together with interest and storage charges), at its own expense, carry and maintain insurance in respect of the Equipment and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment.

Article 6. Possession and Use. Buyer and Lessee shall be entitled to the possession of the Equipment and shall have the full right of use upon Lessee's lines, or upon the lines of connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to Buyer, but only upon and subject to all the terms and conditions of this Agreement, and Buyer may receive compensation for such use; provided, however, that Buyer agrees not to use, assign or permit the assignment of any unit of the Equipment to service involving regular operation and maintenance outside the United States of America and agrees that any use of any unit of the Equipment outside the United States of America will be limited to incidental and temporary use in Canada or Mexico.

Article 7. Prohibition Against Liens. Buyer will pay or discharge any and all sums claimed by any party from, through or under Buyer or Lessee or their successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit or part thereof, equal or superior to Builder's title or property in it; provided, however, that Buyer shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of Builder, adversely affect the property or rights of Builder in or to the Equipment or any Unit of it.

Article 8. Buyer's Indemnities. Buyer agrees to indemnify, protect and hold harmless Builder from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause, and expenses relating to them, including reasonable counsel fees, arising out of retention by Builder of title to the Equipment or the use and operation of the Equipment by Buyer or Lessee during the period when title remains in Builder, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant by Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner.

Article 9. Assignments. Buyer will not sell, assign, transfer or otherwise dispose of its rights under this Agreement.

All or any of the rights, benefits and advantages of Builder under this Agreement, including the right to receive payments as provided to be made by Buyer, may be assigned by Builder and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve Builder from, any of the obligations of Builder to respond to its warranties to Buyer.

Article 10. Defaults. Any one or more of the following events shall constitute defaults under this Agreement:

- (a) Buyer shall fail to pay the CSA Indebtedness, interest and storage charges in full on or before July 2, 1979;
- (b) Buyer shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement;
- (c) any proceedings shall be commenced by or against Buyer or Lessee for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions; or
- (d) Buyer shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest in it.

Builder may at its election waive any such event of default and its consequences by written notice to Buyer to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by Buyer that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

Article 11. Remedies. At any time during the continuance of a default, Builder may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by Builder, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to Buyer any sums previously paid and free from all claims whatsoever, except as expressly provided in this Article, and may remove the Equipment from possession and use of Buyer or Lessee or any other person and for such purpose may enter upon any premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of Lessee.

In case Builder shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of Lessee for the delivery of the Equipment to Builder, Buyer shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on Lessee's lines as shall be designated by Builder and shall there deliver the Equipment or cause it to be delivered to Builder and (b) the Equipment to be moved to such interchange point or points of Lessee as shall be designated by Builder upon any sale, lease or other disposal of all or any part of the Equipment by Builder. At the option of Builder, Buyer shall cause Lessee to permit Builder to keep the Equipment on any of the lines or premises of the Lessee until Builder shall have leased, sold, or otherwise disposed of the same, and for such purpose Buyer agrees to cause Lessee to

furnish, without charge for rent or storage, the necessary facilities at any point or points selected by Builder reasonably convenient to Lessee and, at Builder's risk, to permit inspection of the Equipment by Builder, Builder's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, Builder shall be entitled to a decree against Buyer requiring specific performance of it. Buyer expressly waives any and all claims against Builder and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a default, Builder (after retaking possession of the Equipment as provided in this Article) may at its election and upon notice as provided in Article 14 retain the Equipment in satisfaction of the entire CSA indebtedness and make such disposition of it as Builder shall deem fit. Written notice of Builder's election to retain the Equipment shall be given to Buyer by telegram or registered mail, addressed as provided in Article 14, and to any other persons to whom the law may require notice, within 30 days after such default. If Builder should elect to retain the Equipment and no objection is made by Buyer within the 30-day period, all Buyer's rights in the Equipment and those of anyone claiming an interest through Buyer shall terminate and all payments made by Buyer may be retained by Builder as compensation for the use of the Equipment by Buyer; provided, however, that if Buyer, before the expiration of the 30-day period, should pay or cause to be paid to Builder the total unpaid balance of the CSA indebtedness, together with accrued interest and all other payments due under this Agreement as well as expenses of Builder in retaking possession of, removing and storing the Equipment and Builder's reasonable attorneys' fees, then in such event absolute right to the possession of, title of and property in the Equipment shall pass to and vest in the Buyer; provided, further, that if Buyer or any other persons notified under this paragraph object in writing to Builder within 30 days from the receipt of notice of Builder's election to retain the Equipment, then Builder may not retain the Equipment but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as provided below or as may otherwise be permitted by law. If Builder shall have given no notice to retain or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article.

At any time during the continuance of a default, with or without retaking possession at its election and upon reasonable notice to Buyer and to any other persons to whom the law may require notice of the time and place, Buyer may sell the Equipment, or any unit of it, free from any and all claims of Buyer or any other party claiming from, through or under Buyer at law or in equity, at public or private sale and with or without advertisement, as Builder may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, Buyer should tender full payment of the total unpaid balance of the CSA indebtedness, together with accrued interest and all other payments due under this Agreement as well as expenses of Builder in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Builder's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property

less the attorney's fees and any other expenses incurred by Builder in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to Builder under the provisions of this Agreement.

Any sale as provided in this agreement may be held or conducted at such place or places and at such time or times as Builder may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as Builder may determine. Builder or Buyer may bid for and become the purchaser of the Equipment or any unit of it so offered for sale. Buyer shall be given written notice of such sale not less than ten days prior to it, by telegram or registered mail addressed to Buyer as provided in Article 14. If such sale shall be private (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of Buyer to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. If Builder, FMC Corporation or a majority owned subsidiary of FMC Corporation shall be the purchaser of the Equipment, Builder shall not be accountable to Buyer (except to the extent of surplus money received as hereinafter provided in this Article) and Builder shall be entitled to have credited on account in payment of the CSA indebtedness all or any part of the sums due to Builder from the Buyer under this Agreement. From and after the date of any such sale, Buyer shall pay to Builder the per diem interchange for each unit of Equipment which shall not have been assembled by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy given to Builder in this Article shall be in addition to every other power and remedy specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by Builder. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of Builder in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment or other indulgence duly granted to Buyer shall not otherwise alter or affect Builder's rights or Buyer's obligations hereunder. Builder's acceptance of any payment after it shall have become due shall not be deemed to alter or affect Buyer's obligations or Builder's rights with respect to any subsequent payments or defaults in payments.

If, after applying all sums of money realized by Builder under the remedies, there shall remain any amount due to it under the provisions of this Agreement, Buyer shall pay the amount of such deficiency to Builder upon demand. If Buyer shall fail to pay such deficiency, Builder may bring suit and shall be entitled to recover a judgment against Buyer. If, after applying all sums realized by Builder there shall remain a surplus in the possession of the Builder, such surplus shall be paid to Buyer.

Buyer will pay all reasonable expenses, including attorneys' fees, incurred by Builder in enforcing its remedies under the terms of this Agreement. If Builder shall bring any suit to enforce any of its rights and shall be entitled to judgment, then in such suit Builder may recover reasonable expenses, including attorneys' fees.

The provisions of this Article are subject in all respects to all applicable mandatory legal requirements.

Article 12. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by Buyer to the full extent permitted by law, it being the intention of the parties that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, Buyer, to the full extent permitted by law, waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit of it, and any other requirements as to the time, place and terms of the sale or lease of it, any other requirements with respect to the enforcement of Builder's rights under this Agreement and any and all rights or redemption.

Article 13. Recording. Buyer will cause this Agreement, any assignments and any amendments or supplements to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. Buyer will promptly furnish to Builder certificates or other evidence satisfactory to Builder of such filing, registering, depositing and recording.

Article 14. Notice. Any notice shall be deemed to be properly served if delivered or mailed to a party at its chief place of business at the following specified addresses:

- (a) Buyer at Box 196, Pennel, Pa. 19047, attention President;
- (b) Builder, at 4700 Northwest Front Ave., Portland, Ore. 97208, attention General Manager;
- (c) to any assignee of Builder at such address as may have been furnished in writing to Buyer for such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

Article 15. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Article 16. Law Governing. Buyer warrants that it is a Pennsylvania corporation and that its chief place of business and its chief executive offices are located in the State of Pennsylvania. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof or any financing statement or other similar instrument in respect of this Agreement or any assignment hereof shall be filed, recorded or deposited.

Article 17. Execution. This Agreement may be executed in any number of counterparts, such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties. If this Agreement is assigned by Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by Builder and delivered to such assignee. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution by the parties is or are, respectively, the date or dates stated in the acknowledgments annexed.

IN WITNESS WHEREOF, the parties, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their duly authorized officers, and their respective corporate seals to be affixed, duly attested, all as of the date first above written.

FMC CORPORATION

by 
Vice President

[Corporate Seal]

Attest:


Assistant Secretary

McHugh Brothers Crane Rentals, Inc.

by 
President

[Corporate Seal]

Attest:


Secretary-Treasurer

Exhibit A

<u>Type</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Road Numbers</u>	<u>Time and Place of Delivery</u>
70-ton 50'6" XF Box Cars with Single 10' Sliding Doors and Rigid Underframes	50	\$37,150.	\$1,857,500.	NHIR 851-900 Incl.	June, 1979 at Builder's plant.

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF Ducks,)

On this 11th day of June, 1979, before me personally appeared Robert C. McHugh to me personally know, who, being by me duly sworn, says that he is a President of MC HUGH BROTHERS CRANE RENTAL, INC. that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Effie Shaffer
Notary Public
P.O. Box 196, Pottsville, Bucks County, Pa.
Pennsylvania 17857
My Commission Expires August 29, 1981

[Notarial Seal]

My Commission expires:

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 7th day of June, 1979, before me personally appeared Bart R. van Eck, to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judith A. Zeman
Notary Public

[Notarial Seal]

My Commission expires: My Commission Expires Dec. 29, 1982

6/11/79

Interstate Commerce Commission
Washington, D.C. 20423

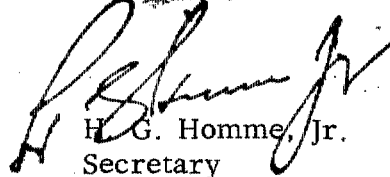
OFFICE OF THE SECRETARY

Dwight L. Koerber, Jr.
Ames, Hill & Ames, P.C.
666 11th St. N.W.
Washington, D.C. 20001

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/11/79 at 3:30pm, and assigned recordation number(s). 10494

Sincerely yours,


H. G. Homme, Jr.
Secretary

Enclosure(s)

SE-30
(3/79)